IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 38 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

COMMISSIONER OF INCOME TAX

Versus

NAVDEEP INVESTMENTS PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 38 of 1992
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 04/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench has referred the following question of law under section 256 (1) of the Income-tax Act, 1961:-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in accepting the claim of the assessee to the effect that the assessee being an investment company, the income from investment was to be treated as business income and that the interest paid on monies borrowed for purchase of shares was to be deducted from business income and as such for computing relief under sec. 80-M, the interest paid on the said borrowing was not liable to be deducted from income by way of dividend ?"

2. While referring the above question, it is also mentioned that, for assessment year 1981-82 also, identical question has been referred to this Court for opinion in the assessee's own case.

3. It was fairly conceded by the learned standing counsel, Mr.M.R.Bhatt, that the only difference between the earlier reference and the present reference is with regard to the assessment year which, in the present case, is 1983-84. It was also conceded that the aforesaid first reference being ITR No.36 of 1990 in respect of the assessment year 1981-82 has been answered in the affirmative, i.e. in favour of the assessee and against the revenue.

4. Following the above judgment of this Court on the same issue in respect of the same assessee, we answer the

question referred to us in the affirmative, i.e. in favour of the assessee and against the revenue. Reference stands disposed accordingly with no order as to costs.

Sd/-

(D.H.Waghela,J.)

Sd/-

(D.A. Mehta, J.)

(KMG Thilake)